IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 562 of 2002
in
SPECIAL CIVIL APPLICATION No 3342 of 1996
with
CIVIL APPLICATION No 5539 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

MAHENDRA K VOHRA

Appearance:

1. LETTERS PATENT APPEAL No. 562 of 2002
MR HS MUNSHAW for Appellant No.
MR KS ACHARYA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 07/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellant-Gujarat State Road Transport Corporation (for short "the Corporation") has challenged in this appeal the judgment and order dated 1.4.2002 passed by the learned Single Judge of this Court (Coram : H.K.Rathod, J.) in Special Civil Application No.3342 of 1996 whereby the learned Single Judge dismissed the writ petition and the appellant-Corporation filed against the impugned judgment and award passed by the Labour Court on 30.9.1995 whereby the Labour Court accepted the reference of the respondent-workman and ordered to pay salary and all consequential benefits of service to the workman from 1.6.1991 to 31.5.1992. The question of reinstatement in service was out of question because during the pendency and final disposal of the reference the workman reached the age of superannuation.

#. This appeal was admitted by the Division Bench of this court on 26.11.2002 and on Civil Application No.5539 of 2002 rule was ordered to be issued making it returnable on 24.12.2002 and ad-interim relief in terms of para 3(B) was granted till further orders on the condition that the applicant-Corporation to deposit the entire amount payable to the workman under award passed by the Labour Court, Rajkot on or before 10.12.2002. Accordingly, the appellant-Corporation has already deposited Rs.53,480/=, which is lying with the Labour Court, Rajkot.

#. This appeal was placed before us on 23.9.2003. On that day, both the learned counsel Mr.Munshaw for the appellant-Corporation and Mr.Acharya for respondent-workman were heard for a considerable time. Having heard learned counsel for the parties, we could have disposed of the appeal on that day itself in view of the impugned award passed by the Labour Court and the judgment and order passed by the learned Single Judge in writ petition. However, Mr.Acharya, learned counsel for the respondent-workman in his usual fairness submitted to the court that without inviting any order from this court in this appeal he is prepared to let go 50% back wages out of full back wages awarded and confirmed by the learned Single Judge in writ petition, provided rest of the order passed by the learned Labour Court is maintained.

#. In view of the above, we adjourned this matter till today with a view to enable Mr.Munshaw, learned counsel for the appellant-Corporation to take necessary instructions in the matter as to whether the Corporation would be satisfied with the 50% back wages instead of full back wages awarded by the Labour Court and confirmed in writ petition by the learned Single Judge of this court.

#. Today, learned counsel Mr.Munshaw for the appellant-Corporation on telephonic instruction received from the concerned officer of the appellant-Corporation stated at the Bar that the impugned judgment and award passed by the learned Labour Court awarding full back wages be modified and the respondent-workman be awarded 50% back wages and the rest of the award passed by the Labour Court be confirmed. He, however, requested that this may not be cited as precedent.

#. In view of the above, without expressing any opinion regarding the legality and validity of the impugned judgment and award passed by the Labour Court and the judgment and order passed by the learned Single Judge dismissing the writ petition, this appeal is partly allowed to the extent that the order of awarding full back wages passed by the Labour Court is modified and it is ordered that the respondent-workman shall be entitled for 50% back wages instead of full back wages awarded by the Labour Court. Rest of the impugned judgment and award passed by the Labour Court is upheld.

#. In view of the above, writ petition i.e. Special Civil Application No.3342 of 1996 is partly accepted on the point of back wages only and the judgment and order passed by the learned Single Judge is accordingly modified.

#. Before parting, we must state that on peculiar facts and circumstances of case, without expressing any opinion regarding legality and validity of the impugned judgment and award passed by the Labour Court, the order regarding back wages is modified, which cannot become precedent. This takes care of the apprehension and expression of learned counsel Mr.Munshaw that in future this may be cited as precedent.

#. Accordingly, this appeal is partly allowed to the aforesaid extent only with no order as to costs.

##. Now, as this appeal is disposed of, Civil

Application is also required to be disposed and accordingly it is disposed of and the amount of Rs.53,480/= lying with the Labour Court, Rajkot is ordered to be distributed by the Labour Court in equal proportion i.e. 50% each to the appellant-Corporation and to the workman. The respondent-workman shall be paid 50% of that amount by way of Account Payee cheque within a period of one week from the receipt of the copy of this order. Remaining 50% of the amount be paid to the appellant-Corporation by way of account payee cheque within one week from the date of receipt of the order. Copy of this order be given to both learned counsel Mr.Munshaw for the appellant-Corporation and Mr.Acharya for the respondent-workman forthwith.

(B.J.Shethna, J.)

(Ravi R. Tripathi, J.)

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